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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 10, 2016

10:04 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Doc# 9364, 9311 Status Conference on ResCap Borrower Claims
Trust's Seventy-Fifth Omnibus Objection to Claims (No Liability
Borrower Claims) solely as it relates to the claim filed by
Rhonda Gosselin.

Doc# 9353 Final Pre-trial Conference Re: Trust's Eighty-Second
Omnibus Objection to Claims (Solely as it relates to Claim No.
3732 filed by Kenneth Dlin.)

Doc# 9707 Case Management Conference on ResCap Borrower Claims
Trust's Objection to Claim Nos. 5610 and 5612 and Pre-Motion
Conference on Motion for Summary Judgment.

(CC: Doc# 9634) Second Motion to Further Extend the Date by
Which Objections to Claims Must be Filed.

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ALSO PRESENT:

PEGGI FOSSELL, Director of Claims Management, ResCap
Liquidating Trust (TELEPHONICALLY)
KENNETH DLIN, Pro Se (TELEPHONICALLY)
RICHARD RODE (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're in
3 Residential Capital, 12-12020.

4 Mr. Wishnew.

5 MR. WISHNEW: Good morning, Your Honor. Jordan
6 Wishnew, Morrison & Foerster, for the ResCap Borrower Claims
7 Trust.

8 Your Honor, the first matter going forward on today's
9 agenda is in Section 2, pre-trial and status conferences; item
10 2, a seventy-fifth omnibus objection to claims as it relates to
11 the claim objection concerning claim 3862 filed by Rhonda
12 Gosselin.

13 THE COURT: Okay.

14 MR. WISHNEW: By way of an update, Your Honor, we have
15 learned that Mr. Laird Heal is now assisting Ms. Gosselin.

16 THE COURT: Oh.

17 MR. WISHNEW: And he is on the line.

18 THE COURT: Mr. Heal.

19 MR. HEAL: Laird Heal. Good morning, Your Honor.

20 THE COURT: It's nice to have you back. I hope you're
21 feeling okay.

22 MR. HEAL: Thank you. I've been reinstated at the
23 District of Massachusetts.

24 THE COURT: Okay. And are you going to appear again
25 for Ms. Gosselin?

1 MR. HEAL: Yes, she's implored me to do that. She
2 hasn't been able to find anyone else to represent her.

3 THE COURT: Okay, I understand that. You'll have to
4 file another notice of appearance because I had approved your
5 withdrawal. But I'd be happy to --

6 MR. HEAL: Thank you.

7 THE COURT: -- assuming that you feel well enough to
8 do it, I'm happy to have you back.

9 MR. HEAL: Yes, my only problem is speaking, which you
10 might be able to tell on the phone.

11 THE COURT: You seem to be doing okay. I can
12 certainly hear you clearly. And have you and Mr. Wishnew
13 spoken about how to proceed?

14 MR. WISHNEW: We've not spoke specifically, Your
15 Honor. By way of brief update, since we were before Your Honor
16 on February 25th, Mr. Heal did provide us with written
17 responses to our discovery requests.

18 THE COURT: Okay.

19 MR. WISHNEW: We received those yesterday after --
20 late yesterday afternoon. We're still in the process of
21 reviewing them, so we did receive responses to our requests for
22 admissions, our document requests, and our interrogatories.
23 We're still waiting on the actual documents referenced in Mr.
24 Heal's response to our document requests. But we haven't
25 discussed scheduling beyond what's already in the existing case

1 management order --

2 THE COURT: All right.

3 MR. WISHNEW: -- which, at docket number 9422,
4 provides for fact discovery to be completed by next Tuesday,
5 March 15th, and with expert discovery to be completed by April
6 29th.

7 The Borrower Trust is not intending to pursue any
8 experts. And I'll let Mr. Heal speak for himself, but in his
9 responses to our discovery, he did not identify any experts
10 that Ms. Gosselin was going to offer.

11 THE COURT: Mr. Heal, do you want to address that
12 issue?

13 MR. HEAL: Your Honor, we haven't identified any
14 experts, and I don't know if it's required in this matter.

15 THE COURT: All right. What I would ask you both to
16 do, since Mr. Heal is just coming back into the matter now, is
17 to confer and try and agree on a schedule. It sounds like
18 there are a few items on fact discovery that remain to be done.
19 Work out a satisfactory agreement between the two of you for
20 completing the fact discovery. It sounds that there won't be
21 any experts. Try and agree upon a date for a joint pre-trial
22 conference order. And when you -- let me know -- well, I guess
23 there probably ought to be an amendment to the case management
24 order if --

25 MR. WISHNEW: Should we submit a letter to Your Honor

1 to that effect and maybe so order it?

2 THE COURT: Yes, that's fine.

3 MR. WISHNEW: Okay.

4 THE COURT: And I will try and come up with a trial --
5 talk to Mr. Heal about the length of the trial that's going to
6 be required to resolve the matter. Okay?

7 MR. WISHNEW: Very good, Your Honor.

8 THE COURT: I don't want to get into the details, but
9 have you exhausted the possibility of settling the matter at
10 this point?

11 MR. WISHNEW: I'll say that we made another settlement
12 offer to Ms. Gosselin. She declined it. But now that Mr.
13 Heal's back involved, I'm optimistic that maybe something can
14 be done.

15 THE COURT: All right, I encourage you both --
16 settlement has to be consensual. I encourage you both to try
17 and resume that discussion and see whether you're able to
18 resolve the matter.

19 And Mr. Heal, will you be able, reasonably, to travel
20 here for trial?

21 MR. HEAL: Laird Heal. Yes, Your Honor. Ms. Gosselin
22 is feeling much better as well, too.

23 THE COURT: Okay, all right. That's good. So that's
24 how we'll leave this matter now.

25 Mr. Wishnew, you'll send a letter to the Court with a

1 proposed schedule. And assuming it's satisfactory to me, I'll
2 so order the letter.

3 MR. WISHNEW: Very good, Your Honor.

4 THE COURT: Thank you very much, Mr. Heal. I hope
5 you're feeling better, and I'm actually glad to have you back
6 in the case. Okay?

7 MR. HEAL: Thank you, Your Honor.

8 THE COURT: Okay, thank you.

9 All right.

10 MR. WISHNEW: Your Honor, the next matter is the
11 Borrower Claims Trust's eighty-second omnibus objection to
12 claims as it relates to the proof of claim and the Borrower's
13 Trust objection to the proof of claim of Kenneth Dlin.

14 Mr. Dlin, I believe, is on the phone. He is
15 represented by counsel, but we were informed late yesterday by
16 counsel that he has a preexisting court appearance in Denver
17 and is not able to participate in today's pre-trial conference.

18 THE COURT: His counsel spoke to chambers.
19 Ordinarily, I -- when I set a date for a hearing where
20 somebody's represented by counsel, he needs to be present. But
21 Mr. Dlin's counsel indicated to one of my law clerks yesterday
22 that you submitted a proposed pre-trial order in the case. And
23 he's satisfied with it. And so that's fine.

24 The one -- I would like you to address, Mr. Wishnew,
25 that there -- did you have any further discussion with Mr.

1 Dlin's counsel -- on page 15 of the proposed pre-trial order,
2 under --

3 MR. WISHNEW: Items B and --

4 THE COURT: -- claimant's objections, it says
5 "reserved". Well, there isn't going to be anything reserved.
6 Have you had any further discussions with him about it?

7 MR. WISHNEW: We have not, Your Honor. Our concern is
8 also with item C, the fact that that refers back to claimant's
9 exhibits on page 13, under Section 6, where it says, "All
10 documentation disclosed on the discovery and supplied by GMAC
11 to us." So --

12 THE COURT: You ought to inform Mr. Dlin's counsel
13 that that's totally unacceptable to me. Exhibit lists have to
14 set forth in detail the exhibits that are being offered,
15 specifically identified, specifically numbered. And so if
16 they're not on the exhibit list, they're not coming into
17 evidence. It's as simple as that.

18 Mr. Dlin, are you on the phone?

19 MR. DLIN: Yes, I am, Your Honor.

20 THE COURT: Okay. You need to communicate with your
21 counsel that -- what I'm saying. Mr. Wishnew will tell him as
22 well. The reason I require that each exhibit be identified on
23 the joint pre-trial order and appropriately labeled is exactly
24 that. It's totally unacceptable to have just all documentation
25 disclosed on the discovery as supplied by GMAC.

1 So Mr. Wishnew, as far as I'm concerned, if it's not
2 on the exhibit list, it isn't coming into evidence.

3 MR. WISHNEW: Okay.

4 THE COURT: Okay?

5 MR. WISHNEW: Um-hum.

6 THE COURT: All right. Anything else, Mr. Wishnew?

7 MR. WISHNEW: That's it, Your Honor. Otherwise, the
8 parties are in general agreement on all terms, including the
9 scheduling and hearing dates going forward.

10 THE COURT: The trial's scheduled for May 11th at 9
11 a.m. It's a six-hour timed trial, three hours for each side.

12 MR. WISHNEW: Yup.

13 THE COURT: Okay. What I'm going to do -- just give
14 me a second. Just bear with me a second.

15 (Pause)

16 THE COURT: All right. On page 15, under Claimant's
17 Objections, instead of "reserved", I'm going to enter -- we're
18 going to include a paragraph that says Dlin's counsel shall
19 have until 5 p.m. March 17, 2016 to identify any objections.

20 And on page 13, VI, Claimant's Exhibits, I'm going to
21 give Dlin's counsel, again, until March 17th at 5 o'clock to
22 identify specifically each exhibit that he intends to offer.

23 MR. WISHNEW: And Your Honor, given that they will
24 identify them by March 17th, presumably, can we then have an
25 additional week or so to amend any --

1 THE COURT: Sure.

2 MR. WISHNEW: -- objections we have?

3 THE COURT: Yes. March 24th, 2016.

4 MR. WISHNEW: Thank you very much, Your Honor.

5 THE COURT: May I ask you to do this. Could you
6 provide the Court with an amended proposed pre-trial order that
7 does what I've just described?

8 MR. WISHNEW: Yes, Your Honor.

9 THE COURT: Okay, all right.

10 MR. WISHNEW: Your Honor, that brings us to item 4 --

11 THE COURT: So with that --

12 MR. WISHNEW: I'm sorry.

13 THE COURT: -- Mr. Dlin, you're welcome to stay on the
14 phone, but you can also excuse yourself if you wish, okay?

15 MR. DLIN: Okay, thank you very much, Judge.

16 THE COURT: Okay, Mr. Dlin.

17 MR. WISHNEW: That brings us to item 4 on today's
18 agenda, which is a status conference on the Borrowers Trust's
19 objection to Richard Rode's claim. I will turn the podium over
20 to my colleague, Erica Richards.

21 THE COURT: Thank you.

22 Ms. Nora, are you on the phone?

23 MS. NORA: I am, Your Honor.

24 THE COURT: Okay.

25 MS. RICHARDS: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MS. RICHARDS: Erica Richards of Morrison & Foerster,
3 appearing on behalf of the ResCap Borrower Claims Trust.

4 THE COURT: Thank you.

5 MS. RICHARDS: Your Honor, at yesterday's telephonic
6 discovery conference, you indicated that we should be prepared
7 to discuss any outstanding discovery issues and scheduling
8 going forward.

9 THE COURT: Yes.

10 MS. RICHARDS: From the Borrower Trust perspective,
11 there are no outstanding discovery issues with one notable
12 exception, and that relates to discovery regarding Mr. Rode's
13 damages. We have propounded written discovery requests to Mr.
14 Rode seeking information regarding the specific amount and
15 nature of his damages. His counsel indicated that that
16 information would be provided in the form of expert reports.

17 Following the entry of the Court's initial scheduling
18 order, we'd agreed with Ms. Nora that those reports would be
19 provided tomorrow, April 11th.

20 THE COURT: Tomorrow's March.

21 MS. RICHARDS: Sorry, March. Getting my dates -- my
22 months confused.

23 We spoke with Ms. Nora following yesterday's
24 conference, as you directed. She indicated that she was not
25 going to be in a position to provide the expert reports

1 tomorrow, but she wasn't able to further give us an indication
2 as to timing at that point. And I would -- at the time we
3 agreed to the March 11th date, the deadline for the close of
4 expert discovery was --

5 THE COURT: April 1st.

6 MS. RICHARDS: -- April 1st. And then, at the
7 February 4th status conference, Your Honor extended that to May
8 1st as an accommodation --

9 THE COURT: Because of the tax --

10 MS. RICHARDS: -- to Ms. Nora. Exactly.

11 THE COURT: Right, accountant for tax issues.

12 MS. RICHARDS: Correct. So Your Honor, we're amenable
13 to moving the deadline for those expert reports. We believe we
14 should receive them no later than April 1st given the
15 importance of that information to our understanding of the
16 claims. We'll also need time to review the reports and
17 potentially depose those experts.

18 That aside, we're committed to the schedule that Your
19 Honor outlined at the May -- excuse me -- the February 4th
20 status conference, which preliminarily suggested a May 1st
21 deadline for expert discovery, pre-trial briefing in mid to
22 late May, and a trial date in early June.

23 THE COURT: All right. Ms. Nora, tell me what the
24 status on the expert report. You have one expert; is that
25 correct?

1 MS. NORA: No, Your Honor. We are going to be
2 amending our response to interrogatory number 13. It is
3 prepared for filing based on the hearing on our discovery
4 issues yesterday. I have substituted a new expert for my tax
5 expert, who, the Court had recognized, was going to be busy
6 during tax season, with a person who can also evaluate the
7 economic loss issues. That individual is a CPA who is also
8 very busy during tax season, and I believe that it is
9 reasonable to provide our new expert, who is going to be
10 testifying substantially as the previous expert would have.
11 But this gentleman, a CPA by the name of Robert Adams, is
12 actually located in Houston, where Mr. Rode's business is
13 located and is qualified to address the same issues.

14 But I think it will be better for the understanding of
15 the economic loss experienced here to have someone local as
16 opposed to my expert, who I've worked with for years and years
17 who's also a tax specialist, but he's in Wisconsin. So there's
18 better understanding of the local conditions with Mr. Adams,
19 who has agreed to be substituted for Rollin Morrison (ph.) --

20 THE COURT: Am I --

21 MS. NORA: -- based on his -- I'm sorry?

22 THE COURT: Am I correct that you only intend to have
23 one expert witness, Mr. Adams?

24 MS. NORA: Well, we will be deleting from our list of
25 experts any expert related to securitization issues subject to

1 appeal, Your Honor.

2 THE COURT: Ms. Nora, my question's a simple one. For
3 the purposes of this trial, are you identifying one expert,
4 Robert Adams?

5 MS. NORA: We are amending our expert witness list to
6 address the issue that we cannot raise securitization issues
7 based on your ruling yesterday, Your Honor.

8 THE COURT: Which part of what I asked do you not --
9 Ms. Nora, stop. Which part of what I asked do you not
10 understand? Do you intend to offer at Mr. Rode's trial one
11 expert witness, Robert Adams? Yes or no.

12 MS. NORA: At this time, Your Honor, that is all we
13 can do.

14 THE COURT: All right. When will you provide the
15 Trust with Mr. Adams' expert report?

16 MS. NORA: Based on my discussions with Mr. Adams
17 yesterday, Your Honor, he is asking for the opportunity to
18 prepare his expert report and provide it by April 22nd.

19 THE COURT: That's too late. The expert discovery --
20 my prior agreement, and I believe that I indicated that was as
21 far as I was going to go, extended the close of expert
22 discovery to May 1. In order for the Trust to have an
23 opportunity to review now Mr. Adam's expert report, no doubt
24 confer with their own expert about it, prepare for and take Mr.
25 Adams' deposition, I'm going to set the deadline for the report

1 as April 1, 2016.

2 MS. NORA: I will advise Mr. Adams.

3 THE COURT: All right. And I don't intend to extend
4 the deadlines any further.

5 So -- and Ms. Richards, submit an amended case
6 management and scheduling order that provides that the claimant
7 shall provide the expert report of Robert Adams on or before 5
8 p.m. April 1, 2016, and providing that the expert discovery
9 shall close on May 1, 2016. I'm presuming that you and Ms.
10 Nora will be able to agree upon a date for Mr. Adam's
11 deposition.

12 Okay. Are there any other issues, Ms. Richards?

13 MS. RICHARDS: Nothing further, Your Honor.

14 THE COURT: Ms. Nora, other issues that you want to
15 raise?

16 MS. NORA: Yes, Your Honor. With respect to any
17 expert that the Trust would want to introduce or the objector,
18 as I understand them, would they be providing that information
19 prior to the May 1st deadline for close of expert discovery?
20 And if so, by what date?

21 THE COURT: Okay. Ms. Richards, do you want to
22 address that issue? If you're going to have an expert, you
23 need to provide Ms. Nora with a copy of that report. You get
24 Mr. Adams' expert report by April 1st, you should be able to
25 provide your own expert's report by April 15th. Is that

1 acceptable?

2 MS. RICHARDS: That is acceptable, Your Honor.

3 THE COURT: All right. So the Trust shall identify
4 and provide any expert reports by April 15th. And that leaves,
5 in my view, sufficient time for Ms. Nora to take your expert's
6 deposition before the May 1st deadline.

7 Is that acceptable, Ms. Richards?

8 MS. RICHARDS: It is, Your Honor. Thank you.

9 THE COURT: Ms. Nora?

10 MS. NORA: Yes, provided that the expert that the
11 Trust might name will be available during that time. We will
12 do it by notice of deposition after the 15th.

13 THE COURT: He or she --

14 MS. NORA: But ordinarily --

15 THE COURT: He or she will be available, as I'm
16 setting a deadline for -- the May 1st deadline for concluding
17 expert discovery. So you work with Ms. Richards in working out
18 dates for the two expert depositions. Okay?

19 MS. NORA: Thank you.

20 THE COURT: All right. To short circuit any
21 controversy about this, if Mr. Adams is locate -- he's in
22 Houston. Is that what you said, Ms. Nora?

23 MS. NORA: Yes, he is, Your Honor.

24 THE COURT: Okay. Mr. Adams -- unless the parties
25 agree otherwise, the deposition of Mr. Adams will take place in

1 Houston, and the deposition of any expert identified by the
2 Trust shall take place at a place that's agreed upon or where
3 the expert is located. Okay? So I want -- there won't be any
4 dispute later. If you agree on some different location and
5 that's an agreement, that's fine with me. If there is no
6 agreement, Mr. Adams will be deposed in Houston, and the
7 Trust's expert will be deposed in whatever city he or she is
8 located.

9 All right? Any other issues, Ms. Nora?

10 MS. NORA: No, Your Honor.

11 THE COURT: All right. Ms. Richards, submit an
12 amended case management and scheduling order that deals with
13 this, okay?

14 MS. RICHARDS: We will do that. Thank you --

15 THE COURT: All right.

16 MS. RICHARDS: -- Your Honor.

17 THE COURT: Thank you very much.

18 MS. RICHARDS: At this point, I will cede the podium
19 to Mr. Shifer.

20 THE COURT: Okay. Mr. Shifer.

21 MR. SHIFER: Good morning, Your Honor. Joseph Shifer
22 of Kramer Levin Naftalis & Frankel for the ResCap Liquidating
23 Trust.

24 Your Honor, this item is number 5 on the agenda, on
25 page 6. It's the second motion to further extend the date by

1 which objections must be filed --

2 THE COURT: Yes.

3 MR. SHIFER: -- meaning it's the third request in
4 total. It's located at docket number 9634. In support of the
5 motion, we filed a declaration by Peggi Fossell, the ResCap
6 Liquidating Trust director of claims management. She's on the
7 phone if Your Honor has any questions.

8 Your Honor, the current objection deadline is set for
9 March 15th, 2016. And by the motion, we're seeking an
10 extension of nine months to December 15th, 2016. In the
11 motion, we discuss the remarkable progress, I think, that's
12 been made by both trusts in resolving claims. Your Honor, of
13 the almost 7,500 claims that were filed in this case, there are
14 currently, as of today, 230 unresolved claims, taking into
15 account that since we filed the motion an additional 27 claims
16 have been resolved, including 26 borrower claims and one
17 nonborrower claim.

18 And Your Honor, as in the past, we've -- out of an
19 abundance of caution, we noticed the motion on all holders of
20 disputed claims. We received one objection, which was filed by
21 Mr. Rode and Ms. Smith, located at docket number 9688. As the
22 issues raised in the objection really relate to the Borrower
23 Claims Trust, the Borrower Claims Trust submitted a response at
24 9721.

25 And unless Your Honor has any questions for me, I'll

1 let Ms. Nora --

2 THE COURT: I don't.

3 MR. SHIFER: -- address her objection.

4 THE COURT: All right, Ms. Nora, go ahead.

5 MS. NORA: Yes, Your Honor, thank you.

6 As the attorney for Mr. Rode and Ms. Smith in the
7 adversary proceeding, which is pending before this Court, our
8 concern is that no one has raised the issue of the Liquidating
9 Trust's motions to extend time for objections on behalf of the
10 Borrower Claims Trust. What we are concerned with is whether
11 or not the Borrower Claims Trust has actually authorized the
12 pending motion. All we have is an assertion, unsworn by
13 counsel, that there was some sort of consultation with counsel
14 for the Borrower Claims Trust. We don't know who that might
15 be.

16 We have concerns about the representation of the
17 Liquidating Trust and the Borrower Claims Trust with respect to
18 the adversary proceeding. And we just are trying to preserve
19 our issues in the adversary proceeding with respect to our
20 objection. I would note for the Court that, while there was a
21 reply filed, the reply referred to a proposed order. The
22 proposed order has not been served on me by CM/ECF and is not
23 attached to the reply. Reference is made to frivolous nature
24 of the concerns of Ms. Smith and Mr. Rode, starting with a
25 concern with respect to their standing because we have not yet

1 been able to certify the class, because we have an issue with
2 respect to whether or not the procedures order is effective.

3 We have not yet served the adversary proceeding
4 complaint, waiting for clarification today with respect to the
5 application of the adversary proceedings order. But we are
6 simply trying to reserve the rights of all so-called borrowers,
7 who are homeowners who have claims that have been declared to
8 be disputed when, in fact, the actual trust agreement that
9 supersedes the plan language says that before any adversary
10 kinds of proceedings, which would be contested claims
11 proceedings, are initiated by the Borrower Claims Trust,
12 efforts have to be made to resolve that claim with the disputed
13 claimant, as is characterized by the opposing counsel here.

14 No effort prior to starting contested claims
15 proceedings by objections, in Ms. Smith's case, of the
16 Liquidating Trust on behalf of the Borrower Claims Trust when
17 they're supposed to be separate entities, or with Mr. Rode by
18 objection from the Borrower Claims Trust, no effort was made to
19 resolve both matters before calling upon the Court's
20 jurisdiction.

21 Furthermore, the --

22 THE COURT: Can you please finish?

23 MS. NORA: -- trust agreement --

24 THE COURT: Please finish. You're rambling. Go
25 ahead, Ms. Nora. Let's go. Come to an end.

1 MS. NORA: Your Honor, I have to object to the Court
2 characterizing our concerns as articulated by this counsel as
3 being rambling. I am trying to address the foundation of the
4 issue in the adversary proceeding that gives my clients
5 standing to file this objection because the trust agreement of
6 the Borrower Claims Trust is not being followed.

7 THE COURT: All right, I've heard your argument. I've
8 read the twenty-nine pages that you filed.

9 The objection of Smith and Rode filed by Ms. Nora is
10 overruled. The Court has serious questions whether Smith and
11 Rode have standing to raise this objection. The Trust
12 previously filed objections to the claims of Smith and Rode.
13 The Court tried the contested matter of the claim of Tia Smith
14 on February 9th, 2016. And right before taking this matter,
15 the Court addressed the issue of this remaining schedule for
16 the contested matter of the claim of Richard Rode.

17 Ms. Nora represents no one else and has no ability to
18 assert an objection on behalf of anyone else. Rode and Smith I
19 don't believe have standing to object because their claims
20 weren't timely objected to. And Smith's claim awaits decision.
21 And Rode, it remains to be scheduled for trial, but it was a
22 timely objection. Even assuming that Smith and Rode have
23 standing, the Court overrules the objection on the merits of
24 it.

25 The Trust has made substantial progress during the

1 course of this case in resolving all outstanding claims. As
2 Mr. Shifer indicated, there are 230 still unresolved claims.
3 Obviously, it's important to move forward with reasonable
4 dispatch to try and resolve those remaining claims. The nine-
5 month extension, in light of the progress the Trust has made
6 and the number of claims that were initially filed and have --
7 most of which is have been resolved, is appropriately
8 reasonable.

9 So the objection's overruled. The motion is granted.
10 Submit an order, and the order should indicate that the Court
11 overruled the objection filed by Ms. Nora.

12 MR. WISHNEW: Thank you, Your Honor.

13 THE COURT: Let's move on to the next matter.

14 MR. WISHNEW: The next item is the adversary
15 proceeding mentioned by Ms. Nora. I'm going to turn the podium
16 over to Mr. Rosenbaum.

17 THE COURT: Okay.

18 Mr. Rosenbaum.

19 MR. ROSENBAUM: Good morning, Your Honor. Norm
20 Rosenbaum on behalf of the ResCap Liquidating Trust and the
21 ResCap Borrower Claims Trust. Mr. Shifer of Kramer Levin is
22 also appearing on behalf of the ResCap Liquidating Trust in
23 this matter. And with the Court's indulgence, he might have
24 some additional statements after I'm done with a very short
25 presentation.

1 Your Honor, this is the pre-trial status conference in
2 adversary proceeding 16-1015. Just to be clear, Your Honor,
3 Morrison & Foerster and Kramer Levin -- Kramer Levin, excuse
4 me, are appearing today solely on behalf of the Trusts and not
5 on behalf of any of the other named defendants in the action.

6 THE COURT: Not even your own firm?

7 MR. ROSENBAUM: Pardon me, Your Honor?

8 THE COURT: Not even your own firm?

9 MR. ROSENBAUM: Not even our own firm.

10 THE COURT: Go ahead.

11 MR. ROSENBAUM: I think Ms. Nora just confirmed
12 something but, to the best of our knowledge, the complaint has
13 not been served.

14 Your Honor, following the filing of the adversary
15 proceedings, the Trust elected to invoke the supplemental
16 adversary proceedings for borrower adversary proceedings, which
17 Your Honor had approved during the pendency of the Chapter 11
18 cases. The Trust's position is that those procedures continue
19 to apply. I would draw the Court's attention to paragraph 72
20 of the confirmation order at page 56, which indicates that
21 prior orders entered, unless otherwise indicated, continue to
22 apply in the case post-confirmation.

23 In accordance with the supplemental adversary
24 procedures order, the Trust served the notice of procedures on
25 Ms. Nora. On February 25th, in accordance with those

1 procedures, counsel for the Trust, Morrison & Foerster and
2 Kramer Levin conducted a telephonic conference with Ms. Nora,
3 at which her clients attended.

4 On February 29th, in accordance with the procedures,
5 the Trust filed a progress report with the Court. We were
6 unable to reach agreement with Ms. Nora as to the content of
7 the report.

8 And on March 1, Ms. Nora, on behalf of the claimants,
9 filed her separate progress report.

10 The substance of the conference itself, pursuant to
11 the terms, is obviously confidential. But the bottom line is
12 we were unable to reach any resolution of the issues raised in
13 the complaint.

14 THE COURT: How does this complaint compare to the
15 complaint earlier filed in the ResCap case with Ms. Nora, as
16 the plaintiff, alleging what seemed to me to be many similar
17 claims?

18 MR. ROSENBAUM: During the pendency of the 11 or after
19 the --

20 THE COURT: Yes, during the pendency of the 11.

21 MR. ROSENBAUM: Your Honor, frankly, I didn't have an
22 opportunity to review that. I would imagine if it's related to
23 securitization issues, it would be quite similar.

24 THE COURT: Well, you ought to go back and look at the
25 complaint that Ms. Nora previously filed, where she was the

1 named plaintiff, and that case was dismissed. She resolved her
2 claim with the debtors at that time. But you ought to go back
3 and look and compare the issues that Ms. Nora raised as a
4 plaintiff. It was a putative class action; it was never
5 certified as a class action. I think she was the only named
6 plaintiff.

7 MR. ROSENBAUM: I'll do so, Your Honor.

8 THE COURT: Okay.

9 MR. ROSENBAUM: For the record, Your Honor, the Trust
10 reserve all their rights under Bankruptcy Rule 9011 in this
11 matter.

12 Your Honor, I believe that Ms. Nora contests whether
13 these procedures apply or not. I think at this point that
14 issue is irrelevant. The purpose of the procedures were
15 followed, and we were able to have a conference with her. And
16 now it's time to move on with this matter.

17 THE COURT: Well, maybe.

18 MR. ROSENBAUM: What I --

19 THE COURT: I have some issues I want to raise.

20 MR. ROSENBAUM: Sure. Just one comment, Your Honor,
21 then I'm happy --

22 THE COURT: Okay.

23 MR. ROSENBAUM: -- to listen to anything you have to
24 say, obviously.

25 What we would propose is that the Trust would move to

1 enforce the plan injunction. We find this entire -- the
2 complaint in its entirety violative of the plan injunction, the
3 exculpation. This is really a wholesale attack on the plan,
4 the confirmation process, and all the participants in that
5 process, including the debtors, the creditors' committee, the
6 professionals. I think it's entirely barred by the plan and
7 the confirmation order.

8 All the borrowers were given notice of the
9 confirmation order and all the documents. Some of them filed
10 objections, including Mr. Rode.

11 THE COURT: Mr. Rode showed up at the confirmation
12 hearing.

13 MR. ROSENBAUM: Mr. Rode attended the confirmation
14 hearing; that's correct, Your Honor.

15 And it's our view that this complaint could be really
16 enjoined in its entirety as an impermissible violation of the
17 plan, and we'd like the opportunity to file a motion to that
18 effect after Ms. Nora completes service. We would request
19 approximately forty-five days to file that motion, Your Honor.

20 THE COURT: Well, so to find Ms. Nora's earlier
21 complaint, if you go to ECF number 2871 in the main case, you
22 will find a copy of Ms. Nora's complaint where she was the
23 plaintiff and there was a very long list of defendants. I'm
24 not going to take the time to deal further with that, but you
25 should explore with other counsel what the -- how that was

1 disposed of at the time.

2 Let me turn to Ms. Nora. Ms. Nora, the complaint, in
3 this case, was filed on January 31, 2016. And you have not
4 filed a motion to be admitted pro hac vice to represent the
5 plaintiffs in this case. So you are not admitted in this case.
6 Is there some reason, with the complaint having been filed on
7 January 31, that you have not moved at this point to be
8 admitted?

9 MS. NORA: My understanding, Your Honor, is I am
10 admitted pro hac vice to represent Ms. Smith and Mr. Rode.

11 THE COURT: No, Ms. Nora, the two orders concerned
12 were, with respect to Ms. Smith, the order is at ECF docket
13 number 9298, and you're only admitted in the main case to
14 represent Ms. Smith in connection with the contested claim
15 matter. With respect to Mr. Rode -- and the order is at ECF
16 docket 9297 -- again, admitted in the main case to represent
17 Mr. Rode in connection with the claim objection. The adversary
18 proceeding that you filed is an entirely separate matter with
19 its own separate docket, and you have not been admitted pro hac
20 vice to represent either of the named plaintiffs or its
21 putative class in that action.

22 When you file an application, you will need to
23 specifically address the following issues: whether, in light
24 of the -- you are not a member of the New York bar; in light of
25 the number of matters in which you have been permitted to

1 represent individuals pro hac vice, whether you are seeking to
2 engage in unauthorized practice of law by representing anyone
3 and everyone in connection with this matter. I believe it's
4 appropriate for the Court to impose limitations. That's issue
5 number one.

6 Issue number two, and a much more serious issue: the
7 Court tried the contested matter of the claim of Tia Smith on
8 February 9th, 2016. Before the start of the trial, you engaged
9 in serious misconduct in my courtroom which I admonished you
10 for at that time. To be clear, after I had placed all of my
11 papers, notes, and documents on the bench, and my law clerks
12 had placed their papers on their table, both of which are
13 within the so-called well, I was back in chambers when the
14 court reporter called into chambers and reported that you had
15 entered the well, had gone up to the bench, and were looking at
16 my papers on the desk.

17 When he cautioned you about it, you walked away from
18 there and you went over to my law clerk's table, and you did
19 the same thing. I came into the courtroom, and I admonished
20 you about your serious misconduct. There is no court in this
21 country, I believe, that permits lawyers to enter the well
22 without permission and, specifically, to go up to the judge's
23 bench and look at his papers and notes before the start of a
24 trial. And then, when warned about it by the court reporter,
25 you went over to my law clerk's table and attempted to do the

1 same thing.

2 I came into the courtroom aghast that you would do
3 that. I believe it was -- I told you at that time that you had
4 engaged in very serious misconduct.

5 Now, if you wish to appear pro hac vice in connection
6 with this new putative class action adversary proceeding you
7 filed, the Court will have to evaluate whether to extend the
8 privilege of a lawyer not admitted in New York, who has engaged
9 in serious misconduct in this judge's courtroom, to appear pro
10 hac vice in connection with the matter.

11 I will give you until a week from today to file an
12 application to appear pro hac vice. The Court will then
13 determine what, if any, action to take with respect to that
14 application.

15 And you should caution any other lawyer who seeks to
16 appear in this case that they are going to have to sign the
17 complaint and that their signature on the complaint is a
18 certification that they have complied with Rule 9011 before
19 attempting to proceed with this action.

20 I won't get into it now. I will leave it to the
21 defendants in the case to decide whether they wish to seek to
22 take action against you in connection with the complaint which
23 you did sign and filed in this court, in this matter. But as
24 of now, you are not admitted in this court for purposes of this
25 adversary proceeding.

1 Mr. Rosenbaum correctly raises an issue, which I'm not
2 addressing today, as to whether the plan injunction bars or
3 precludes the action that you filed, which I will leave it to
4 counsel to compare it with the complaint that you previously
5 filed as a named plaintiff in the action, which is at ECF 2871
6 in the main case and had a separate number as an adversary
7 proceeding. So we're not going to proceed -- since you are not
8 admitted to appear in this case, I'm not going to proceed
9 further with this hearing.

10 I will wait to see whether you can appear as counsel,
11 and if you can't, what action the Court takes, whether to
12 dismiss the complaint or what, but that's how we're leaving
13 this matter today.

14 As I understand, Mr. Rosenbaum, the defendants have
15 not been served. Is that your understanding?

16 MR. ROSENBAUM: That's correct, Your Honor.

17 THE COURT: All right. I've addressed this matter to
18 the extent that it's going to be addressed today.

19 Anything else, Mr. Rosenbaum?

20 MS. NORA: May I respond? Because the Court has
21 accused me of serious misconduct.

22 THE COURT: I told you that -- I told you that on
23 February 9th that you had engaged in serious misconduct --

24 MS. NORA: That --

25 THE COURT: -- when you came to the bench and looked

1 at the papers on my desk in my absence and did the same thing
2 with my law clerk's bench. I told -- table. I told you that
3 at the trial on February 9th I was aghast that you would do
4 that and that you did. You can respond --

5 MS. NORA: So wait. And you wouldn't speak --

6 THE COURT: -- in writing, not now. You can respond
7 in connection --

8 MS. NORA: -- to it --

9 THE COURT: -- with an application, if you choose to
10 file one, to appear pro hac vice in connection with this new
11 adversary proceeding, which you are not admitted in. Is there
12 anything else the ResCap calendar for today?

13 MR. ROSENBAUM: No, that concludes the agenda --

14 THE COURT: All right, we're adjourned.

15 MR. ROSENBAUM: -- Your Honor.

16 (Whereupon these proceedings were concluded at 10:46 AM)

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I N D E X

RULINGS

	PAGE	LINE
Section motion to further extend the date	24	9
by which objections to claims must be filed		
is granted as specified		

1
2
3
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C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.



ALIZA CHODOFF

AAERT Certified Electronic Transcriber CET**D-634

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Date: March 11, 2016